



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,913	08/20/2001	Nghi Van Nguyen	05725.0848-00	4345
7590 04/13/2004 Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER ELHILO, EISA B	
			ART UNIT 1751	PAPER NUMBER

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/931,913	Applicant(s) NGUYEN ET AL.	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) 46-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- 1 This action is responsive to the amendment filed on 1/30/2004.
- 2 The rejection of claims 1-6, 19-20, 39-41 and 43 under 35 U.S.C. 102(b) as being anticipated by Wella AG[Wela] (DE 2014628), is withdrawn because of the applicant's amendment. The amended claims now require at least one complexing agent to be presented in the composition.
- 3 The rejection of claims 7-8 and 44-45 under 35 U.S.C. 103(a) as being unpatentable over Wella AG[Wela] (DE 2014628), is withdrawn because of the applicant's amendment. The amended claims now require at least one complexing agent to be presented in the composition.
- 4 The rejection of claims 1-4, 9-28 and 30-42 under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US 5,872,111), is maintained for the reasons set forth in the previous office action in paper No. 8, dated 10/27/2003.
- 5 The rejection of claim 29 under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US 5,872,111) in view of Pyles et al. (US 2001/0008630 A1), is maintained for the reasons set forth in the previous office action in paper No. 8, dated 10/27/2003.
- 6 Claims 46-92 are withdrawn from further consideration by the examiner as being drawn to none elected invention for the reasons set forth in the previous office action in paper No. 8, dated 10/27/2003.

NEW GROUND OF REJECTION

- 7 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 1751

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-8 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US 5,872,111) in view of Wella AG[Wela] (DE 2014628).

Au et al. (US' 111) teaches a shampoo composition comprising sodium hydroxide (see col. 14, line 30), oxidizing agent of hydrogen peroxide (see col. 30, lines 5-16) and complexing agent or sequestering agent that dissociate hydroxide compounds (see col. 14, lines 14-32).

Although Au et al, generally teaches a shampoo composition that comprises sodium hydroxide, oxidizing agent and complexing agent, Au et al, is silent about the percentage amount of sodium hydroxide in the composition.

Wella AG[Wela] (DE' 628) teaches in analogous art of hair straightening compositions, a composition comprising 2.0% of sodium hydroxide (see abstract and page 6, Example 4).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made to be motivated to modify the composition of Au et al., by optimizing the amounts of sodium hydroxide in order to get the maximum effective amount.

Response to the applicant's Arguments

8 Applicant's arguments filed 1/30/2004 have been fully considered but they are not persuasive.

With respect to the rejection based upon Au et al., Applicant argues that the reference does not teach or disclose a composition for lanthionizing keratin fibers. The applicant also argues that Au et al., does not teach or suggest a shampoo composition comprising at least one oxidizing agent.

Art Unit: 1751

The examiner respectfully disagrees with above arguments because Au et al., teaches a composition that used as a personal product or hair care product such as conditioning shampoo, hair setting product, hair styling products, permanent wave products, hair straightening/ relaxing products and the like (see col. 31, lines 30-39). Au et al., also teaches a composition comprising hydrogen peroxide (see col.29, line 62). Therefore, the rejection is proper and the prima faice case of obviousness has been established.

With respect to the rejection based upon Au et al. in view of Pyles et al., Applicant argues that Au et al. does not teach or suggest all of the elements of the instant claims.

The examiner respectfully disagrees with the above argument for the same reasons mentioned above.

9 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

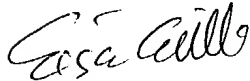
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1751

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
April 5, 2004

Brian P. Mruk
BRIAN P. MRUK
PRIMARY EXAMINER
TECH CENTER 1700